Court, U.S.
FILED
APR 28 1999
OFFICE OF THE CLERK

No. 98-1464

In the Supreme Court of the United States

OCTOBER TERM, 1998

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., PETITIONERS

v.

CHARLIE CONDON, ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONERS

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Respondents agree that the Court should grant certiorari in this case to review the court of appeals' decision holding the Driver's Privacy Protection Act of 1994 (DPPA), 18 U.S.C. 2721-2725, unconstitutional. Resp. Mem. 1-2, 8. Specifically, respondents point out that "[t]he four circuits in which the issue has arisen are evenly split in their results," and they submit that "[c]learly, a decision of this Court is necessary to resolve the present inconsistency in the enforceability of [the DPPA] in different regions of the country." *Id.* at 2.

Respondents urge the Court to rephrase the question presented by the certiorari petition, however, to limit the issue before the Court to whether the DPPA violates the Tenth Amendment, and to exclude consideration of Section 5 of the Fourteenth Amendment as a basis to sustain the validity of the DPPA. Resp. Mem. 15-16. The government does not rely in this Court on Section 5 of the Fourteenth Amendment as a basis for the DPPA, and the certiorari petition does not seek review of the aspect of the court of appeals' decision rejecting the Fourteenth Amendment as a basis for the DPPA (see Pet. App. 22a-26a). Accordingly, it is unnecessary to restate the question presented in the manner suggested by respondents.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

APRIL 1999